



**south dakota**  
DEPARTMENT OF EDUCATION

Learning. Leadership. Service.



Technical Assistance for Excellence in Special Education

# South Dakota LEA Director Webinar Series

## Webinar #3: Dispute Resolution

# Purpose of the Webinar Series

- Identify the components of the general supervision system.
- Provide an overview of regulations related to selected general supervision topics for LEA directors.
- Provide an opportunity for Q&A on the specific topics in general supervision.

# Webinar Schedule

December 20, 2016

January 23, 2017

February 22, 2017

***March 28, 2017***

April 25, 2017

Child Count

SPP/APR

Dispute Resolution

***Monitoring and RDA***

Budget/Fiscal



# Outcomes for Today

## **Participants will:**

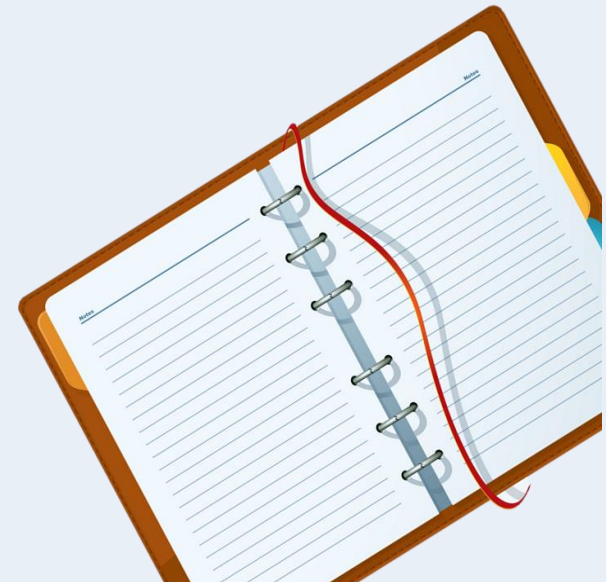
- Identify dispute resolution as a general supervision responsibility of the State Education Agency (SEA).
- Be familiar with the specific federal and state regulations on dispute resolution.
- Understand the importance of dispute resolution as a procedural safeguard.
- Be familiar with dispute resolution options available in South Dakota and how to access them.

# Materials and Resources

- Agenda
- PPT Handout

## **Dispute Resolution Resources**

- OSERS Memo and Q&A
- CADRE Continuum of DR
- DR Quick Guide to Processes
- Cadre DR Article
- Facilitated IEPs
- Trends in DR Article



# What is Dispute Resolution?


## *Interactive Poll*





# Big Picture!

## IDEA Part B—Reauthorization 2004

- 
- Sec. 611 AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.
  - Sec. 612 STATE ELIGIBILITY.
  - Sec. 613 LOCAL EDUCATIONAL AGENCY ELIGIBILITY.
  - Sec. 614 EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.
  - **Sec. 615 PROCEDURAL SAFEGUARDS.**
  - Sec. 616 MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.
  - Sec. 617 ADMINISTRATION.
  - Sec. 618 PROGRAM INFORMATION.
  - Sec. 619 PRESCHOOL GRANTS.

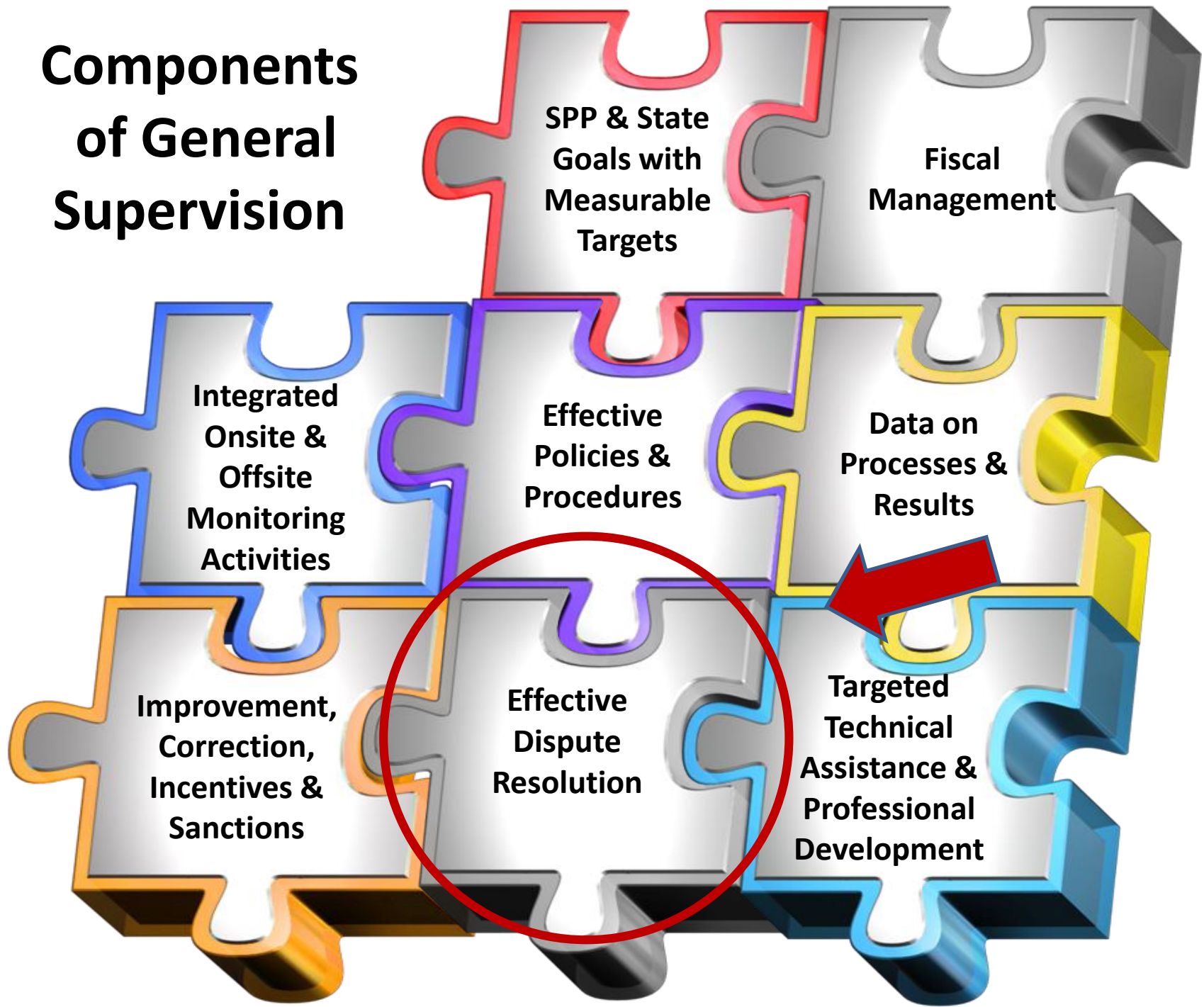
# Corresponding Regulations

## 34 CFR

- Procedural Safeguards and Due Process Procedures for Parents and Children
  - 300.500 through 300.520
- Discipline Procedures
  - 300.530 through 300.537



# Components of General Supervision



# What It's All About!

## Accountability!!!

Section 616 of the IDEA says,

**“The primary focus of federal and State monitoring activities:**

- A. Improving educational results and functional outcomes for all children with disabilities; and
- B. Ensuring that States meet those requirements...with a particular emphasis on those requirements that are most closely related to **improving educational results** for children with disabilities.”

# What is Dispute Resolution?

Section 615 of the IDEA identifies procedural safeguards, which are designed to protect the rights of parents and students with disabilities...

# What is Dispute Resolution?

...procedural safeguards provide mechanisms for schools and families to resolve disputes that are inherent to the special education process.

# SEA Requirements

States and entities that receive Part B funds for special education are required to offer four processes to resolve disagreements that may arise under IDEA.



# SEA Requirements

The required processes include:

1. Mediation.
2. Resolution Meetings.
3. Written State Complaints.
4. Due process complaint/hearing request.



# Informal Dispute Resolution

- Informal approaches to dispute resolution:
  - IEP review meeting
  - Facilitated IEP meeting

IEP facilitation is not mentioned in IDEA.  
Therefore, there is no requirement for States or LEAs to offer it.



# Trends in Dispute Resolution

- Since 2006, adversarial processes such as written state complaints and due process complaints have been on the decline.
- Optional, collaborative approaches to dispute resolution, such as mediation and IEP facilitation, have increased.

(CADRE, Trends in Dispute Resolution under IDEA, 2016)

# Continuum of Dispute Resolution Options

- Each Option corresponds to stages of conflict:
  - Prevention
  - Disagreement
  - Conflict
  - Procedural safeguards
  - Legal review

(CADRE, Continuum of Dispute Resolution Options Processes & Practices)

# Continuum of Dispute Resolution Options

## CADRE Continuum of Processes & Practices

Stages of Conflict	Stage I				Stage II			Stage III				Stage IV				Stage V		
Levels of Intervention	Prevention				Disagreement			Conflict				Procedural Safeguards				Legal Review		
Assistance/ Intervention Options	Parent Engagement	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent to Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation under IDEA	Written State Complaints	Due Process Hearing	Hearing Appeal (Two-Tier Systems)	Litigation	Legislation
Dimensions that help clarify placement of the options along the Continuum	Third-Party Assistance											Third-Party Intervention						
	Decision Making by Parties											Decision Making by Third-Party						
	Interest-Based											Rights-Based						
	Informal & Flexible											Formal & Fixed						

# State Procedures

*DR Options Continued*

*From the State Perspective:*

**South Dakota DR Procedures**

# Dispute Resolution

February 22, 2017

# Dispute Resolution Coordinator (DRC)

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# Dispute Resolution Options

IEP Facilitation

Mediation

Complaints

Due Process Hearing

These options are available to parents and districts.



# IEP Facilitation

IEP facilitation is not a federal requirement;  
therefore, we do not have federal mandates.

# IEP Facilitation – What Is It?

Parents of children with disabilities and school staff sometimes disagree about a child's special education and related services. A facilitated IEP meeting is an IEP meeting that includes an **impartial facilitator** who promotes effective communication and assists the IEP team in developing an acceptable IEP. The facilitator keeps the team focused on the proper development of the IEP while addressing conflicts that arise. IEP facilitation is not used to resolve disputes unrelated to the IEP.

# Purpose of IEP Facilitation

- A facilitated IEP meeting:
  - Supports all parties in participating fully.
  - Builds and improves relationships among IEP team members and between parents and schools.
  - Ensures that the meeting is student focused.
  - Models effective communication.
  - Clarifies points of agreement and disagreement.
  - Provides opportunities for team members to consider other alternatives.
  - Is provided at no cost to the parents or the school.
  - Is less stressful than formal proceedings.
  - Supports improved implementation because there is greater ownership by all members.

# IEP Facilitation – How It Works

- Parent or district contacts DRC.
  - Informs party of brochure and sample request form at <http://www.doe.sd.gov/oess/sped-complaints.aspx>
- Party submits written request for IEP facilitation.

# IEP Facilitation Request

- Both parties may file jointly.
  - If one party submits without both signatures, DRC will obtain signature from 2<sup>nd</sup> party.
- Both parties must agree and sign request.
- Requests should be submitted 2 weeks prior to the IEP meeting.
- A copy of the request will be provided to both parties.

# IEP Facilitation – DRC Role

- Request is received by fax, mail, or email.
- DRC contacts both parties to schedule an IEP date if one is not already scheduled and gather a list of attendees.
- DRC locates available, impartial IEP facilitator.
- DRC organizes location of the IEP facilitation (neutral location).
- DRC sends out an appointment letter.

# IEP Facilitation – Appointment Letter

- What does it consist of?
  - List of attendees
  - Date, location, and time
  - Assigned facilitator
    - Either party should advise DRC if there is a conflict of interest.
    - Facilitator also has the option to determine if they have a conflict of interest.
  - Instructions or guidance for both parties
  - DRC contact information



# IEP Facilitation – Facilitator Role

- The facilitator:
  - Assists members of the IEP team to focus on developing a satisfactory IEP and helps create an overall agenda for the meeting.
  - Guides the discussion by keeping the team's energy centered on student-focused questions such as "Where does the student need to be a year from now?"
  - Helps the team resolve disagreements that arise during the meeting.

# IEP Facilitation – Facilitator Role

- The facilitator:
  - Fosters open communication.
  - Asks clarifying questions about issues.
  - Keeps the team members on task.
  - Maintains impartiality and does not take sides, place blame, or determine if a particular decision is right or wrong.
  - Does not impose a decision on the group.

# IEP Facilitation – Facilitator Role

- **Does the facilitator make decisions?**
  - The facilitator, who is ***not*** a member of the team, facilitates communication among the IEP team members and assists them in developing an appropriate IEP for the student. The members of the IEP team are the decision-makers.

# IEP Facilitation – Expected Outcome

- IEP is developed that both parties agree with.
- IEP is supported by the team and benefits the child.

# IEP Facilitation – How to Prepare

- Identify issues that you want to discuss.
- Make a list of student's/child's needs.
- Organize documents you want to share and bring extra copies.
- Be willing to listen and consider other's ideas.
- Think about how you will be prepared to handle emotions at the meeting.
- Arrive a few minutes early to prepare for participation.

# IEP Facilitation – What Happens Next?

- DRC will send the parents and the district a survey with a self-addressed stamped envelope.
  - Identify issues.
  - Improve processes.
- What if the IEP facilitation is unsuccessful?
  - Parents have the right to file mediation request, complaint, or due process.

# QUESTIONS?



# Mediations

Regulations:

[ARSD 24:05:30:09 to 24:05:30:09.03](#)

# Mediation – What Is It?

Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties with a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent/neutral mediator and discuss a problem, issue, concern, or complaint in order to resolve the problem amicably without going to due process.

# Mediation – Purpose

- May resolve disagreements more quickly than other options.
- Available anytime there is a disagreement between parents and educators about special education and/or related services.
- Participants work together on a solution.
- More flexible and less adversarial than the other dispute resolution options.
- Voluntary for both parties.
- Confidential and cannot be used in due process hearing or civil lawsuit.

# Mediation – How It Works

- Parent or district contacts DRC.
  - Informs party of Q&A and sample request form at <http://www.doe.sd.gov/oess/sped-complaints.aspx>
- Party submits written request for mediation that includes:
  - Student's name
  - Summary of the issues
  - Parties involved
  - Parent and district contact information

# Mediation – DRC Role

- Request is received by fax, mail, or email.
- DRC contacts both parties to schedule a mediation date and gather a list of attendees (within timely manner).
- DRC locates available, impartial mediator.
- DRC organizes location of the mediation (neutral location).
- DRC sends out an appointment letter with arrangements.

Note: If either party has concerns regarding who is appointed or other information on the letter, they should contact DRC immediately.

# Mediation – Appointment Letter

- What does it consist of?
  - List of attendees
  - Date, location, and time
  - Assigned mediator
    - Either party should advise DRC if there is a conflict of interest.
    - The mediator also has the option to determine if they have a conflict of interest.
  - Instructions or guidance for both parties
  - DRC contact information

# Mediation – Mediator Role

- Facilitates communication and negotiation.
- Helps both parties express views/positions.
- Helps both parties understand others' perspectives.
- Assists with generating potential solutions.
- Records agreements in writing and obtains signatures.

# Mediation – District Responsibility

- District representative has authority to enter into a binding agreement on its behalf.
- Attorneys
  - While there is nothing in the statute or the regulations that prohibits a parent or public agency from having an attorney attend, the presence of an attorney could contribute to a potentially adversarial atmosphere that may not necessarily be in the best interests of the child.



# Mediation – How to Prepare

- Identify issues that you want to discuss.
- Make a list of student's/child's needs.
- Organize documents you want to share and bring extra copies.
- Be willing to listen and consider other's ideas.
- Think about how you will be prepared to handle emotions at the meeting.
- Arrive a few minutes early to prepare for participation.

# Mediation – Expected Outcome

- Signed written agreement that resolves the disagreement.
- Discussions in mediation are confidential.
- Agreement is signed by parent and agency representative.
- Agreement is legally binding and enforceable by law.

# Mediation – What Happens Next?

- DRC will send the parents and the district a survey with a self-addressed stamped envelope.
  - Identify issues
  - Improve processes
- If mediation is unsuccessful, the parents have the option to file a complaint or due process.

# QUESTIONS?

# State Complaints

Regulation:

[ARSD 24:05:30](#)

# Complaint – What Is It?

A state complaint is filed when it is believed that that a public school district or agency has not followed IDEA and complainant is requesting that the State Educational Agency (SEA) investigate.

Any person or organization may file a state complaint.

# Complaint – How It Works

- Complainant will complete and submit formal complaint.
  - Q&A and a sample state complaint request can be found at <http://www.doe.sd.gov/oess/sped-complaints.aspx>
  - Formal complaint must include:
    - Student information
    - Complainant information
    - Statement of the violations
    - Statement of facts or supporting evidence
    - List of documents to be reviewed
    - Desired outcomes

# Complaint – How It Works (cont.)

- A copy of the complaint and supporting documents is sent to district administration.
- Mediation is offered while complaint is in process.
- Complainant investigator (CI) is assigned.
  - Complainant, district, and other involved parties are sent an appointment letter that
    - States who the complaint investigator is
    - Includes the date the final report is due
    - Outlines the process



# Complaint – Complaint Investigator Role

- CI interviews all parties and requests documents to review.
- CI will make determinations based on evidence and regulations as to whether the school district or agency has violated FAPE .
- Writes report for SEP review and finalization.
  - Complaint investigations are completed and final report is sent within 60 calendar days of SEA receiving the request.

# Complaint – DRC Role

- DRC will assign available complaint investigator.
- DRC sends an appointment letter to the complainant, district, and/or other parties involved.
- DRC answers questions from either party related to the process only.
- DRC and special education director review the final report submitted by investigator.
- DRC obtains signature from special education director and mails final report to all parties.
- DRC assists district with corrective action completion.

# Complaint – What Happens Next?

- Final report within 60 calendar days:
  - Findings of noncompliance will outline suggested corrective action.
  - No findings – no further action needed.
- District submits plan of intent within 30 calendar days.
- District has 1 year from report date to complete corrective action.
- Accountability review within 1 year (onsite or offsite).

# QUESTIONS?

# Due Process Hearing

Regulations:

[ARSD 24:05:30](#)

# Due Process Hearing – What is it?

A process used to resolve a formal complaint made by a parent or public agency regarding disagreements related to FAPE.

Due process complaints must be filed within 2 years of the date when complainant was aware of the violation.

# Due Process Hearing – Outcome/Result

- A written decision with findings of fact and conclusions of law, which may order specific activities to be carried out.
- The decision is legally binding on both parties.

# Due Process Hearing – How it works

- A parent or district may file a due process request with the SEA.
  - Example forms located at <http://www.doe.sd.gov/oess/sped-complaints.aspx>
  - Due process request must include:
    - Student information
    - Parent/guardian information
    - District information
    - Description of each issue
      - Related facts
      - Proposed resolution
- DOE/SEP assigns a hearing officer.
- Hearing officer contacts all parties to schedule proceedings.



# Due Process Hearing – District Responsibility

- District has 10 days to respond to request via Parent Prior Written Notice (PPWN).
- District has 15 days to schedule a resolution session.
  - If parties agree to resolution session, the 45-day timeline for conducting hearing is suspended.
    - If no resolution is made within 30 days, the 45-day timeline begins.
    - If agreement is reached between parties prior to 45 days, they must submit agreement in writing that is signed by both parties.
      - Parties have 3 days to void agreement and continue to hearing.

# Due Process Hearing – How to Prepare Both Parties

- Be prepared to:
  - Gather and submit evidence.
  - Prepare testimony, witness lists, and other hearing documents.
  - Question and cross-examine witnesses.
- School districts are typically represented by attorneys. If a parent hires an attorney, it is at their own expense. However, in limited circumstances the prevailing party may try to recover fees in a separate court proceeding.

# Due Process Hearing – Hearing Officer Role

- Once hearing officer receives appointment from DOE/SEP, they contact all parties.
- They are the main point of contact.
- They schedule pre-hearing and hearing date(s) with all parties.
- They inform all parties of requirements and expectations.
- The complaint is heard and the final decision is made by the hearing officer, who is not involved in the child's education.
- The hearing officer issues the final decision:
  - Submits final report to parents, district, and SEA.
  - Final decision must be issued within 45 calendar days from the end of the resolution period, unless either party requests an extension.

# Due Process Hearing – What Happens Next?

- The decision is appealable in state or federal court.
- Under limited circumstances, the prevailing party may attempt to recover attorneys' fees in a separate court action.
- DRC oversees the districts corrective actions to ensure completion.
- The district will submit documentation supporting completion of each corrective action.
- Upon successful completion, the DRC will send a letter stating corrective actions have been successfully completed to the district.

# Expedited Due Process Hearing

Regulations:

[ARSD 24:05:30](#)

# Expedited Due Process Hearing – When Is It Used?

- Option is only available when parents disagree with the school district's discipline decision and it affects the student's placement due to student's behavior being dangerous to themselves or others.
- A parent or school district may file.
- A hearing officer is assigned and process is similar to a regular due process hearing.
- DRC oversees the district's corrective actions.

# Expedited Due Process Hearing – Differences

- Resolution session must occur within 7 days unless parties agree in writing to not have the meeting or choose mediation.
- Hearing timeline proceeds if the issue is not resolved within 15 days.
- Hearing must be held within 20 school days.
- Decision is issued within 10 days of the hearing.

# QUESTIONS?



# Dispute Resolution Resources

- <http://doe.sd.gov/oess/sped-complaints.aspx>
  - IEP Facilitation
  - Mediation
  - Complaints
  - Due Process
  - State Data and Complaint Logs
- OSEP Dispute Resolution Q&A:  
<https://www2.ed.gov/policy/special/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>
- CADRE: <http://www.directionservice.org/cadre/index.cfm>
  - <http://www.directionservice.org/cadre/pdf/DisputeResolutionProcessComparisonChart.pdf>
- DOE's Procedural Safeguard Manual
  - <http://www.doe.sd.gov/oess/sped-parentalrights.aspx>
- Special Education Professional Development Webinars:
  - Dispute Resolution in Special Education Matters Webinar by Jim Walsh
  - Special Education Legal Updates (Save the Date – April 19<sup>th</sup>, 2017 Spring 2017 Legal Update)
  - <http://www.doe.sd.gov/oess/SPED-webinars.aspx>

# Parent Connection



# Q&A on South Dakota's SPP/APR

- What questions do you have for the South Dakota Department of Education on the topic of dispute resolution?

# Summary and Next Steps

- Familiarize yourself with the appropriate regulations.
- Be aware of what dispute resolution under the IDEA means, including the various options available.
- Be familiar with resources available.
- Be proactive!

# Webinar Evaluation

- Survey Monkey Link:

<https://www.surveymonkey.com/r/7C3X67M>

Thanks in advance for taking a few moments to complete!

A group of approximately 18 diverse children of various ethnicities and ages are smiling and posing behind a large wooden sign. The sign has a blue background and white text. The children are standing in front of a light-colored brick wall.

**Keep the main thing  
the main thing!**



**UtahStateUniversity**  
CENTER FOR PERSONS WITH DISABILITIES

This document was developed by the Center for Technical Assistance for Excellence in Special Education (TAESE) of the Center for Persons with Disabilities, University Center for Excellence in Developmental Disabilities in the Emma Eccles Jones College of Education and Human Services at Utah State University.

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